

Deposition Designations for:

ELIHU INSELBUCH
June 12, 2009

Deposition Designation Key

CI = Certain insurers (green)

**CNA = Continental Cas. Co &
Continental Ins. Co. (red)**

PP's = Plan Proponents (blue)

Obj: = Objection

Ctr = Counter Designation

R = Relevance

BE = Best Evidence

F = Foundation

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: Chapter 11
Case No.
01-01139 JKF

W.R. Grace & Co., et al.,

(Jointly
Debtors. Administered)

X

- - -
June 12, 2009
- - -

DEPOSITION of ELIHU INSELBUCH,
held at the offices of Caplin &
Drysedale, Chartered, 375 Park Avenue,
New York, New York, commencing at
approximately 9:37 A.M., on the above
date, before Lisa Lynch, a Registered
Merit Reporter, New Jersey Certified
Court Reporter, License No. XI00825,
and Certified Realtime Reporter

- - -
MAGNA LEGAL SERVICES, LLP
7 Penn Center, 8th Floor
1635 Market Street
Philadelphia, PA 19103
1.866.MAGNA.21

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MR. FINCH: Object to form.

A. I don't know what you mean. I have served as, and do serve as, counsel to some of the trust advisory committees.

Q. And would you explain for the record what a trust advisory committee is?

MR. FINCH: Object to form.

A. Under the terms of these plans and under the terms of the TDPs that are part of the plan documents, an entity is created called a trust advisory committee which consists of one or more attorneys who have responsibilities that are defined within the TDP documents and within the trust agreement documents.

MR. J. COHN: Dan, let's just note the arrival of two more counsel. Would you identify yourselves?

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MR. MUELLER: Alex Mueller from Mendes & Mount for certain London market insurance companies.

MS. DeCHRISTOFARO: Elizabeth DeChristofaro from Ford Marrin for Continental Casualty Company and Continental Insurance Company.

THE WITNESS: Those appearances are not part of the roles of the TACs, and I don't remember where I was in the middle of my answer.

MR. COHN: Well, let's help you by reading back as far as you got in this answer.

(Off the record.)

(The Reporter reads the last answer.)

BY MR. COHN:

Q. Do you have anything to add?

A. That's enough.

Q. And in that capacity, have you been actually called upon to render advice to those trust advisory committees?

A. From time to time.

Q. Now, what is your role in the W.R. Grace Chapter 11 case?

A. My firm is counsel to the asbestos creditors committee.

Q. And what is your personal role in connection with that representation?

A. I suspect that I am the lead counsel.

Q. You suspect or is that what you are?

A. What I am is in the eye of the beholder.

Q. Did you participate in negotiations concerning the plan -- strike that.

Did you participate in negotiations that led to the filing

of the Chapter 11 plan that is now coming before the Bankruptcy Court?

A. I did.

Q. Would you describe your role in those negotiations?

A. I was counsel to the asbestos creditors committee.

Q. Would it be fair to say that you were the lead negotiator for the asbestos creditors committee?

MR. FINCH: Object to form.

A. I wouldn't say so.

Q. Who else participated in the negotiations on behalf of the ACC?

A. Well, if we're talking about the part of the negotiations that involve the crafting and agreement to the term sheet or the economic arrangements with the debtor, the committee -- when I say "the committee", I mean the asbestos creditors committee -- the committee

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C1 Page 22 PP's Obj: R	C1 Page 24 PP's Obj: R
<p>1 appointed a negotiating subcommittee 2 that attended those negotiations and 3 I attended with them. 4 That negotiating subcommittee, 5 as I remember, consisted of Mr. Rice; 6 Mr. Weitz, W-e-i-t-z; Mr. Cooney, and 7 one or both of Mr. Budd and/or Mr. 8 Baron. 9 If we're talking about the 10 negotiations thereafter that involved 11 work with the futures rep and other 12 plan proponent constituencies in 13 developing what became the documents 14 that reflect the plan, I played a 15 minor role in that other than -- 16 well, I should say I played a minor 17 role in that other than in connection 18 with the development of the trust 19 agreement and the TDP. 20 The other documents and the 21 negotiation of those documents were 22 assigned by the committee to my 23 partner, Mr. Lockwood, and others who 24 worked under his leadership.</p>	<p>1 could compare it with my copy of the 2 term sheet that I signed and figure 3 out whether it's the same document, 4 but I have no way of knowing. If you 5 represent to me that it is, I'll 6 accept your representation. 7 Q. Well, yes, let me 8 represent to you that's the same 9 document that I have always seen and 10 has always been represented to me to 11 be the correct term sheet. 12 A. Well, I have a book in 13 front of me with three documents that 14 I've been working with. One is the 15 TDP as it exists in the plan, one is 16 the trust agreement as it exists in 17 the plan and the other is the term 18 sheet that I signed. 19 MR. COHN: Let's go off 20 the record. 21 (Off the record.) 22 (Term sheet, seven 23 pages, marked for 24 identification as Inselbuch</p>
C1 Page 23 PP's Obj: R	C1 Page 25 PP's Obj: R
<p>1 Q. So is it fair to say on 2 behalf of the ACC you were the person 3 primarily responsible for the trust 4 agreement and the TDP? 5 A. I was the counsel 6 primarily involved in that work. 7 MR. COHN: Let's mark 8 this as Exhibit 2, please. 9 (Term sheet, 11 pages, 10 marked for identification as 11 Inselbuch Exhibit 2.) 12 BY MR. COHN: 13 Q. Do you have Exhibit 2 in 14 front of you? 15 A. I do. 16 Q. Do you recognize it? 17 A. No. 18 Q. If you would turn to the 19 last four pages of that document, let 20 me ask you whether you recognize 21 those four pages. 22 A. I do not. It purports 23 to be the term sheet. I've never 24 seen it in this form so I guess I</p>	<p>1 Exhibit 2A.) 2 (Preliminary Expert 3 Report on W.R. Grace Trust by 4 Mark Peterson dated March 5 2009 marked for identification 6 as Inselbuch Exhibit 3.) 7 (Exhibit 4 to Exhibit 8 Book, Trust Distribution 9 Procedures, marked for 10 identification as Inselbuch 11 Exhibit 4.) 12 MR. COHN: All right, 13 back on the record. 14 Q. Do you now have in front 15 of you a document that has been 16 marked as Exhibit 2A? 17 A. Yes, sir. 18 Q. Do you recognize that 19 one? 20 A. I do. 21 Q. Tell us what it is. 22 A. It's the term sheet that 23 was signed among the debtor, the 24 futures rep, the committee and I</p>

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believe the equity. Yes, the equity committee I guess they're called.

Q. Okay. And when you said "the committee" in your answer, you meant the Asbestos Claimants Committee?

A. Yes. I will mean that always.

Q. Terrific. And that's also what we mean when we say ACC?

A. Yes.

Q. Now, does this document, Exhibit 2A, reflect the entire deal amongst those parties concerning the subject matter thereafter at the time that it was entered into?

MR. FINCH: Object to form.

A. Like all term sheets, it reflects all the points that the people who signed it thought needed to be put on paper at the time.

Q. And what points were agreed to but not put on paper?

A. None that I recall. But for sure when you -- when you negotiate a term sheet, you understand that what will evolve in what are much more complicated documents are issues subsidiary to the issues that are agreed in the term sheet that will need to be resolved over time within the context of the term sheet agreement.

Q. Were there any understandings reached in connection with this term sheet that would not rise to the level of an agreement?

A. Not --

MR. FINCH: Object to form.

A. -- that I recall.

Q. And specifically concerning treatment of Libby claims, were there any agreements or understandings?

A. Not that I recall, other than what's provided in the

document.

Q. Have you reviewed a transcript of the recent deposition of Peter Lockwood?

A. I read it briefly, quickly.

Q. In that brief reading, did you come across any statements made by Mr. Lockwood with which you disagreed?

MR. FINCH: Object to form, vague, overbroad.

A. Yeah, there was one place where he was talking about or answering questions that had to do with a provision in the term sheet -- in the TDP -- let's see -- in the extraordinary claims section as to whether or not that portion of the extraordinary claims criteria which requires that there not be the potential for substantial recovery elsewhere would apply to the extraordinary claim that would

satisfy the criteria otherwise for an eight times treatment. He was unclear about that, at best, and perhaps wrong. My understanding of that provision is that that requirement is included in either category of the extraordinary claims treatment.

Q. All right. To qualify for the eight times multiplier under extraordinary claims treatment, you must, in addition to meeting the exposure criteria set forth in the TDP, also show little likelihood of substantial recovery elsewhere?

A. Whatever that language is, yes, for sure.

Q. Any other statements come to mind that you saw with which you did not agree?

MR. FINCH: Object to form.

A. Not that I recall off the top of my head.

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1 Q. Have you reviewed a
2 transcript of the recent deposition
3 of Mark Peterson?

4 A. No.

5 Q. All right. Let me now
6 hand you a document that has been
7 marked as Exhibit 3. This is Dr.
8 Peterson's report.

9 MR. COHN: What I'm
10 handing around the room are
11 just the pages on which I
12 intend to ask questions because
13 otherwise the copying would
14 have been voluminous.

15 Q. I'm sorry. Did I --

16 A. You didn't ask me
17 anything.

18 Q. Thank you. Do you
19 recognize the document that has been
20 marked Exhibit 3?

21 A. I recognize it says what
22 it says it is.

23 Q. Which is what?

24 A. It says it's the

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1 Preliminary Expert Report on W.R.
2 Grace Trust by Mark Peterson of Legal
3 Analysis Systems dated March 2009.

4 Q. And do you know Dr.
5 Peterson?

6 A. I do.

7 Q. What is his capacity in
8 this case?

9 A. He is engaged as an
10 expert to assist the asbestos -- to
11 assist the committee.

12 Q. Thank you.

13 Let me now hand you a document
14 that's been marked as Exhibit 4. I
15 will represent to everyone concerned
16 this is a copy of the trust
17 distribution procedures, or TDP, that
18 has been attached to the plan.

19 MR. COHN: In accordance
20 with our custom at these
21 depositions, the parties will
22 use their own copies to refer
23 to but we understand it is the
24 same document.

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1 Q. Do you recognize Exhibit
2 4, Mr. Inselbuch?

3 A. I accept your
4 representation that it is what it
5 says it is.

6 Q. Okay, thank you.

7 Now, let me ask you to look at
8 Exhibit 3, which is Dr. Peterson's
9 report, and take a look at page five.

10 A. I'm at page five.

11 Q. All right.

12 A. I should warn you I'm
13 reading this for the first time.

14 Q. Okay. Let me point you
15 then to exactly the statement I want
16 you to read. Would you read the
17 first sentence of the second
18 paragraph on page five?

19 A. Yes.

20 Q. Would you like to read
21 it out loud, please, for the
22 record?

23 A. "The trust's TDP follows
24 the standard form used for almost

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1 every asbestos trust created since
2 2002."

3 Q. Do you agree with that
4 statement?

5 A. Yes.

6 Q. So when I talk about the
7 standard form or a term such as that,
8 you'll understand that I'm referring
9 to what Dr. Peterson is referring to
10 here, which is the standard form of
11 TDP that has been used for almost
12 every asbestos trust created since
13 2002?

14 MR. FINCH: Object to
15 form.

16 A. Is that a question?

17 Q. Will you understand that
18 that's what I mean by that term?

19 A. Okay.

20 Q. Now, in this case there
21 were some departures from the
22 standard form; is that correct?

23 A. In each case there is
24 some departures from the standard

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1 form and there were some here too.

2 **Q. Who drafted the TDP in**
3 **this case?**

4 A. The TDP that evolved
5 into the one in this case?

6 **Q. Yes.**

7 A. That's now on file?

8 **Q. Exhibit 4.**

9 A. The first draft, my
10 office, probably Anne McMillan.

11 **Q. And how did the document**
12 **evolve from that first draft into**
13 **Exhibit 4?**

14 A. Okay. You will recall
15 that at some point the Court relieved
16 the debtor's exclusivity. At that
17 point the committee and the futures
18 rep determined to file their own
19 plan, proposed plan of
20 reorganization.

21 In that connection, it was
22 understood that there would be the
23 need for a trust agreement and a TDP
24 and it was at that point, which I

1 the committee and the futures rep on
2 the terms of the TDP.

3 Events then overtook that plan.
4 In fact, the events that you make
5 reference to with this term sheet
6 which was signed -- I'm referring to
7 Exhibit 2A -- in early April of 2008
8 and now there was a TDP that needed
9 to be considered by the other plan
10 proponents because it would now not
11 be associated with a separate plan
12 that had been filed by the committee
13 and the futures rep but, rather,
14 would evolve into a plan that would
15 be filed by the plan proponents as
16 part of that plan.

17 In the spring of 2008 the
18 committee and the futures rep were
19 already aware of criticisms that
20 counsel for some of the Libby
21 claimants had with the terms of the
22 TDP and we entered into a dialogue at
23 the instructions of the committee
24 with you and with Mr. Heberling to

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1 believe was somewhere in the fall of
2 2007, that we began the preparation
3 of the TDP.

4 A draft was crafted by our
5 office for consideration by the
6 committee. After the committee
7 considered the draft and considered
8 input from Dr. Peterson, the draft
9 was put in a form that was then
10 submitted to the futures rep's
11 counsel for their consideration. And
12 after we received their comments and
13 suggestions, the draft was further
14 edited and reconsidered by the
15 committee and sometime by the
16 beginning/early part of 2008 there
17 was a TDP that was agreeable to the
18 committee and to the futures rep.

19 Prior to that time we had
20 actually filed a plan, I believe,
21 that was proposed by the committee
22 and the futures rep but I believe --
23 my best memory is that plan was filed
24 before there was agreement between

1 see whether points that you were
2 making were of sufficient validity to
3 cause us to consider changes in the
4 TDP. Some of those points were so
5 considered and resulted in changes in
6 the TDP that evolved in the spring
7 and summer of 2008 and are reflected
8 in the plan as filed.

9 There were also comments to the
10 TDP that were received from other
11 parties who had an interest and a
12 right to consider the documents. I'm
13 mindful of the representatives that
14 counsel for Sealed Air participated
15 in some parts of the TDP and trust
16 agreement and there may have been
17 comments as well from the debtor.
18 I'm not -- I don't recall. But the
19 effect of all of that was it was --
20 the result of all of that was the TDP
21 that is now your Exhibit 4. That's
22 the general history of its evolution.

23 **Q. Let's turn to Section**
24 **5.3(b)(3) of the TDP at pages 31 and**

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1 into two parts. The first part is
2 the greater of the trust's last offer
3 to the claimant or the award that the
4 claimant declined in non-binding
5 arbitration. That's what it says the
6 first part is. However, that amount
7 should not exceed the amount that the
8 jury decides.

9 Now, the balance, it says, gets
10 divided into five equal installments
11 in years 6 through 10 following the
12 year of the initial payment, all of
13 that again subject to the applicable
14 payment percentage, the maximum
15 available payment and the claims
16 payment ratio provisions. So that's
17 how it gets paid out. And it doesn't
18 get any sequencing adjustments.

19 **Q. And is it subject to**
20 **maximum value or is it --**

21 A. Yes, and it's subject to
22 the maximum values.

23 **Q. So that the amount of**
24 **the trust's last offer or the**

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1 pending question.)

2 MR. FINCH: Object to
3 form.

4 A. No. It's the amount
5 between whatever the award was and
6 what was paid, limited by the maximum
7 value.

8 **Q. Right. So --**

9 A. Could be less.

10 **Q. That's a very fair**
11 **point. So let's assume that the jury**
12 **verdict is in excess of the --**

13 A. Then it would be the
14 difference between the maximum --

15 **Q. -- maximum value.**

16 A. -- value and what was
17 already paid.

18 **Q. And when we say "maximum**
19 **value", to Mr. Finch's point --**

20 A. Yeah.

21 **Q. -- we are including --**
22 **that is the greater of the maximum**
23 **value set forth in the matrix or the**
24 **scheduled value multiplied by the**

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1 **non-binding arbitration award --**

2 A. Yes.

3 **Q. -- assuming that they --**
4 **that the jury verdict is not less**
5 **than those amounts --**

6 A. Yes.

7 **Q. -- will get paid on the**
8 **same basis as though the claim had**
9 **been allowed -- excuse me --**
10 **liquidated upon expedited review?**

11 A. That's what it seems to
12 say.

13 **Q. The next traunch, if you**
14 **will, of the jury verdict is the**
15 **amount between that initial payment**
16 **and the maximum value for the claim.**
17 **Is that correct?**

18 MR. FINCH: Object to
19 form. Maximum value or maximum
20 extraordinary value as the case
21 may be.

22 THE WITNESS: Could I
23 have the question back?

24 (The reporter reads the

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1 **extraordinary claims multiplier if**
2 **the claim is an extraordinary**
3 **claim?**

4 A. Well, maximum value is a
5 defined term. It's a defined term
6 with respect to extraordinary claims
7 too.

8 **Q. And then to the extent**
9 **that there is remaining value to the**
10 **jury verdict over and above those two**
11 **tranches that we spoke about, how**
12 **does that get paid?**

13 A. It doesn't.

14 **Q. I just want to make sure**
15 **I understand your testimony a few**
16 **minutes ago. Did I hear you**
17 **correctly that, to your knowledge, no**
18 **claimant has ever exercised the right**
19 **to pursue its claim in the tort**
20 **system under one of these standard**
21 **form TDPs?**

22 A. That's my best
23 recollection.

24 **Q. And you would most**

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likely have been aware if such an event had taken place?

A. I think so, but I can't be sure of that.

Q. All right. Let's talk about the extraordinary claims multiplier under Section 5.4(a).

A. Yes.

MR. J. COHN: I'm sorry, Dan. Where are you?

MR. COHN: Section 5.4(a) in the TDP.

MR. FINCH: Page 32.

Q. Now, is it fair to say that to obtain liquidation of a claim as an extraordinary claim a claimant must meet two criteria, one having to do with exposure and one having to do with little likelihood of a substantial recovery elsewhere?

A. I don't know whether it's fair to say that. I think that's correct.

Q. Now, focusing first on

the exposure criteria, how do these vary from standard form TDPs that we've been referring to?

A. The variance is the additional provision toward the bottom of the runover paragraph on page 33 that provides for an additional category where the exposure was 95 percent the result of exposure to Grace products.

Q. So under the standard form of TDP, there is an extraordinary claim treatment for exposures that are 75 percent the result of the debtor's asbestos?

A. Correct.

Q. And those provide a five times multiplier for such claims?

A. That's correct.

Q. And here the change is that there's an eight times multiplier for exposures of 95 percent?

A. That's correct.

Q. How did this change come about?

A. Based upon discussions that I and members of the committee had with you and Mr. Heberling, the idea was that, as distinguished from the usual situation where asbestos claimants were generally exposed to more than one defendant's product, it would be the case in Libby or for people exposed in Libby that there would be only exposure to Grace's product and, thus, that was a little different from what was normally provided.

To put in context what the extraordinary claims provision is trying to accomplish, as you know, the scheduled values or even the individual review values are meant to reflect the respective defendants' share of the responsibility for the claim as kind of evidenced historically by what the defendant

had paid to settle claims.

In most jurisdiction, the defendant, which would be Grace here but it could be any of the others, would be jointly and severally liable with others for the tort responsibility and, thus, if the case went to verdict, they would be a single recovery, a single amount, and any one of the jointly and severally responsible tort feorsors would have to pay that if called upon to pay that. And that would develop into, under the state law, rules that would involve contribution or things like that among joint tort feorsors.

The TDP is designed to provide for an award in the normal case where there are multiplicity of available defendants of that defendant's respective share. When we first worked with this concept, which I believe goes back to the original Manville, maybe even the Manville

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1 defendant would have specific
2 liability to the particular claimant
3 because of the exposure to the
4 particular product which was caused
5 in part by this defendant even if
6 they didn't manufacture it.

7 MR. SPEIGHTS: Thank
8 you, sir.

9 THE WITNESS: Next?

10 MR. FINCH: Lunch break?
11 (Off the record.)

12 **EXAMINATION BY**
13 **MR. BROWN:**

14 **Q. Good afternoon, Mr.**
15 **Inselbuch. Michael Brown. I**
16 **represent Geico, Republic Insurance**
17 **Company, Seaton Insurance Company**
18 **and OneBeacon America Insurance**
19 **Company.**

20 **A. How fortunate for you.**

21 **Q. I want to follow up on**
22 **some of Mr. Cohn's questioning of you**
23 **earlier this morning and I think --**
24

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1 **I'm not sure I followed all of the**
2 **exhibits but I believe Exhibit 2A is**
3 **the term sheet, at least your copy of**
4 **the term sheet, the one you were**
5 **familiar with. Is that correct?**

6 **A. Yes, sir. It's the one**
7 **I signed.**

8 **Q. Okay. Do you have that**
9 **in front of you?**

10 **A. I do.**

11 **Q. Okay. I'm correct, am I**
12 **not, that it's dated April 6, 2008?**

13 **A. That's correct.**

14 **Q. And you executed it on**
15 **behalf of the official committee of**
16 **asbestos personal injury claimants,**
17 **otherwise known as the committee, or**
18 **the ACC, correct?**

19 **A. That's correct.**

20 **Q. Okay. You indicated**
21 **earlier in response to one of Mr.**
22 **Cohn's questions that the ACC had a**
23 **negotiating subcommittee and I**
24 **understood you to be saying that that**

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1 **was a subcommittee in connection with**
2 **the negotiations leading to the term**
3 **sheet. Is that correct?**

4 **A. That's correct.**

5 **Q. Okay. And those**
6 **individuals were Joe Rice, Perry**
7 **Weitz, John Cooney and Fred Baron**
8 **and/or Russell Budd. Am I correct?**

9 **A. No, not Fred, no. Steve**
10 **Baron --**

11 **Q. Steve Baron. I'm sorry.**

12 **A. -- and/or Russell**
13 **Budd.**

14 **Q. All right. Am I correct**
15 **that counsel for the ACC was also**
16 **involved in those negotiations?**

17 **A. Correct.**

18 **Q. And would that be you**
19 **and Mr. Lockwood?**

20 **A. It would certainly be**
21 **me. I don't recall whether Lockwood**
22 **was there for some or all of that.**

23 **Q. Okay. Did the other**
24 **parties that ultimately became the**

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1 **plan proponents -- did they also have**
2 **negotiating teams?**

3 **A. The debtor certainly**
4 **did, the futures claimants certainly**
5 **did, the equity security holder**
6 **certainly did, yes.**

7 **Q. Okay. Can you identify**
8 **the debtor's negotiating team?**

9 **A. Their chairman was**
10 **there, their general counsel was**
11 **there, their chief financial officer**
12 **was there, Mr. Bernick was there, the**
13 **chief legal officer was there. There**
14 **may have been others but those are**
15 **the people I remember.**

16 **Q. Okay. The chairman was**
17 **Mr. Festa?**

18 **A. Yes, sir.**

19 **Q. And the general counsel**
20 **was Mr. Shelnitz?**

21 **A. Yes, sir.**

22 **Q. And the CFO was Mr.**
23 **LaForce?**

24 **A. I don't recall his**

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<p>1 name.</p> <p>2 Q. Okay. Who was the chief</p> <p>3 legal officer?</p> <p>4 A. That would have been Mr.</p> <p>5 Shelnitz.</p> <p>6 Q. Okay. And who was the</p> <p>7 negotiating team for the FCR?</p> <p>8 A. Mr. Frankel, at some</p> <p>9 points David Austern I believe was</p> <p>10 there. There may have been others.</p> <p>11 Q. You don't recall them?</p> <p>12 A. I don't recall now.</p> <p>13 Q. Okay. And how about the</p> <p>14 equity committee?</p> <p>15 A. Mr. Weschler.</p> <p>16 Q. Is that it?</p> <p>17 A. As far as I recall.</p> <p>18 Q. Now, other than the four</p> <p>19 parties that ultimately signed the</p> <p>20 term sheet, were there any other</p> <p>21 parties or entities or individuals</p> <p>22 that were involved in the</p> <p>23 negotiations leading up to the April</p> <p>24 6, 2008 term sheet?</p>	<p>1 A. Not that I recall.</p> <p>2 Q. All right. I think you</p> <p>3 testified earlier this morning that</p> <p>4 after the term sheet -- Well, let me</p> <p>5 back up.</p> <p>6 You indicated in your earlier</p> <p>7 testimony, I believe, that Anne</p> <p>8 McMillan from your office prepared</p> <p>9 the initial draft of the TDP. Is</p> <p>10 that correct?</p> <p>11 A. I said it may have been</p> <p>12 Anne McMillan.</p> <p>13 Q. Okay. Do you know</p> <p>14 whether whoever created it -- well,</p> <p>15 let me back up.</p> <p>16 Was it someone from Caplin &</p> <p>17 Drysdale that created the initial</p> <p>18 draft?</p> <p>19 A. Correct.</p> <p>20 Q. Do you know whether that</p> <p>21 draft still exists today?</p> <p>22 A. No.</p> <p>23 Q. Do you know what</p> <p>24 model -- I think I heard the term</p>
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<p>1 MR. FINCH: Object to</p> <p>2 form.</p> <p>3 A. Not that I recall.</p> <p>4 Q. Were any of the debtor's</p> <p>5 insurers involved in the negotiations</p> <p>6 that resulted in the term sheet?</p> <p>7 A. None that I attended.</p> <p>8 Q. To your knowledge, were</p> <p>9 any of them asked or invited to</p> <p>10 participate in the negotiations that</p> <p>11 led up to the term sheet?</p> <p>12 MR. FINCH: Objection,</p> <p>13 lack of foundation.</p> <p>14 A. I don't know.</p> <p>15 Q. Were you ever advised by</p> <p>16 any other party to the negotiations</p> <p>17 that they did not want the insurers</p> <p>18 to participate in the negotiations?</p> <p>19 MS. BAER: Objection.</p> <p>20 A. No.</p> <p>21 Q. Did any other party to</p> <p>22 the negotiations suggest that they</p> <p>23 did want the insurers involved in the</p> <p>24 negotiations?</p>	<p>1 earlier in your testimony that there</p> <p>2 was a model that was used.</p> <p>3 Do you know what model was used</p> <p>4 to create the first draft of the</p> <p>5 TDP?</p> <p>6 A. My ex -- I don't know</p> <p>7 the answer. My expectation would be</p> <p>8 that she or someone else in the firm</p> <p>9 would have started with the</p> <p>10 then-most-recent rendition of the TDP</p> <p>11 sometime in 2007 that had been</p> <p>12 approved either by a committee in</p> <p>13 some other bankruptcy or in court and</p> <p>14 used that as the beginning place to</p> <p>15 start. I don't recall what that</p> <p>16 might have been.</p> <p>17 Q. Okay. Now, you</p> <p>18 indicated that that initial draft was</p> <p>19 created by your office in the fall of</p> <p>20 two thousand --</p> <p>21 A. Two thousand --</p> <p>22 Q. Sorry -- in the fall of</p> <p>23 2007 for consideration by the</p> <p>24 committee.</p>

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R,
BE

1 A. I think that's
2 correct.

3 **Q. Is that right?**

4 A. I believe that's
5 correct.

6 **Q. And that was after your**
7 **office had received input from Mark**
8 **Peterson on the draft, as I**
9 **understood your earlier testimony?**

10 A. No, before.

11 **Q. Okay.**

12 A. The draft would have had
13 blanks for all of the numbers and for
14 the payment percentage.

15 **Q. Okay. Did it go to Mark**
16 **Peterson first or did it go to your**
17 **client first?**

18 A. I don't recall. It
19 certainly would not have gone to
20 Peterson first. It might have gone
21 to him simultaneously.

22 **Q. And Mr. Peterson, I**
23 **gather, provided you with his**
24 **comments?**

1 alternate recommendations based upon
2 different concepts. He sometimes
3 provides them with ranges of
4 recommendations for them to
5 consider.

6 **Q. Okay. You indicated**
7 **earlier that in or around early 2008**
8 **that the committee shared its then**
9 **working draft of the TDP with the**
10 **FCR. Do I have that correct?**

11 A. I think that timing is
12 correct but I'm not sure. It could
13 have been a little earlier than
14 that.

15 **Q. And had there been a**
16 **plan filed, a joint plan, proposed**
17 **plan, by the ACC and FCR at that**
18 **point?**

19 A. That's my
20 recollection.

21 **Q. All right. You then**
22 **indicated that the -- the plan I**
23 **suppose you were talking about was**
24 **superseded by events was, I think,**

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1 A. Provided the committee
2 with his thoughts, yes.

3 **Q. Okay. And what were the**
4 **nature of his thoughts or comments on**
5 **the draft that was provided to him?**

6 A. He doesn't comment on
7 the draft. He provides
8 information --

9 **Q. What does he comment**
10 **on?**

11 A. He doesn't comment. He
12 provides information that will
13 facilitate the committee's decisions
14 as to what figures to place in the
15 matrix and also to deal with the --
16 just a second. I've got to get the
17 right word for you -- the claims
18 payment ratio.

19 **Q. Does he actually provide**
20 **the committee with figures for the**
21 **matrix?**

22 A. He does. He provides
23 his recommendations, he provides them
24 with considered -- sometimes with

1 **the term that you've used and that's**
2 **what ultimately led up to the term**
3 **sheet. What events were you alluding**
4 **to?**

5 A. Well, soon thereafter we
6 began the estimation hearings and in
7 the course of the estimation hearings
8 what the -- the negotiations that led
9 to the term sheet began. And once
10 there was agreement on the term sheet
11 with the debtor, there was no need to
12 pursue the separate plan that the
13 committee and the futures rep had
14 filed because we would be pursuing a
15 plan with the debtor and the equity
16 committee.

17 **Q. When did the estimation**
18 **hearing begin?**

19 A. I don't recall offhand,
20 but my best guess would be sometime
21 in March of 2008.

22 THE WITNESS: Earlier
23 than that?

24 A. Well, I've got that

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1 wrong. I'm told I got that wrong.
2 It was earlier in 2008.

3 **Q. You indicated also that**
4 **at some point -- it wasn't clear to**
5 **me when in this process -- the draft**
6 **TDP was shared with Sealed Air. Can**
7 **you tell me when that was?**

8 A. It would have been later
9 on, after there was pretty much a
10 draft of plan documents because they
11 didn't just see the TDP; they saw a
12 whole bunch of plan documents to
13 provide their comments. I can't give
14 you a date, but it would have been in
15 2008 at some point.

16 **Q. Would it have been after**
17 **the term sheet was signed but before**
18 **the initial plan documents were filed**
19 **in September of 2008?**

20 A. I don't recall.

21 **Q. Do you have an**
22 **understanding as to why Sealed Air**
23 **had an interest in the TDPs?**

24 A. There was a settlement

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1 agreement with Sealed Air and
2 Fresenius under which they would pay
3 considerable sums that would be
4 available to compensate some of the
5 claimants here. And under the terms
6 of that settlement agreements, there
7 were requirements that had to be
8 accomplished in order to trigger
9 their obligation to pay the monies.
10 Some of those obligations involved
11 protections and language in plans --
12 in a plan of reorganization for their
13 benefit.

14 **Q. At the time that the**
15 **TDPs were shared with Sealed Air for**
16 **their review, were they also shared**
17 **with the debtor's insurers for the**
18 **debtor's insurers' review?**

19 A. I have no idea.

20 **Q. Let me shift gears for a**
21 **moment because I gather Mr. Cohn is**
22 **not back with the copies.**

23 MR. J. COHN: I am.

24 MR. BROWN: Oh, you

1 are.

2 MR. J. COHN: Yes.

3 MR. BROWN: Do you want
4 to, I guess, give the witness
5 the one-page bio first?

6 MR. J. COHN: Sure.

7 (Biography page of Elihu
8 Inselbuch marked for
9 identification as Inselbuch
10 Exhibit 5.)

11 **Q. Mr. Inselbuch, you**
12 **should have before you a one-page**
13 **document that I'm going to bet that**
14 **you don't have any trouble**
15 **identifying but I'll ask the question**
16 **anyway. Can you identify it?**

17 A. It's a biography of me
18 that is, I believe, put together by
19 my firm and is either on the website
20 or in other material where the firm
21 collects a rogues gallery of its
22 lawyers.

23 **Q. I will represent to you**
24 **that I pulled it off your website.**

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1 **In the second paragraph there**
2 **are a number of cases that are**
3 **referenced --**

4 A. Yes.

5 **Q. -- some of which you**
6 **have mentioned earlier in your**
7 **testimony today, and what I want to**
8 **ask you about each of those cases is**
9 **whether Mark Peterson was involved in**
10 **those cases. So can you run down the**
11 **list that is in the bio and tell me,**
12 **one, whether Mark Peterson was**
13 **involved and, two, as to each what**
14 **his role was?**

15 A. Okay.

16 MR. FINCH: Object to
17 form. You can answer.

18 THE WITNESS: I can
19 answer this?

20 MR. FINCH: Yes.

21 A. The best I can do, let's
22 see. Johns-Manville, he was not
23 involved in the original bankruptcy
24 proceeding. In the restructuring

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1 throughout the country, how
2 information might be made available
3 to the trust, how the process can be
4 made less cumbersome, things like
5 that.

6 **Q. Are the members of the**
7 **plaintiffs' asbestos bar the only**
8 **ones that have that knowledge?**

9 A. In that detail, yes.

10 **Q. There's no defense**
11 **attorneys in asbestos litigation that**
12 **would have that knowledge?**

13 A. No, not all of it. Very
14 little of it. The defense attorneys
15 will be familiar with what's in their
16 files and what they do.

17 **Q. And how does that**
18 **differ --**

19 MR. FINCH: Object to
20 form.

21 **Q. -- from what the**
22 **plaintiffs' asbestos attorneys do?**

23 A. It's like day and
24 night.

1 consistent with the expectations of
2 the constituencies that care about
3 it.

4 **Q. And the only**
5 **constituencies that care about it, I**
6 **gather, are the asbestos claimants?**

7 A. And the futures
8 representative.

9 **Q. Do the insurers have any**
10 **interest in it?**

11 A. The insurers have an
12 interest in what they're required to
13 pay. What they're required to pay is
14 defined by their contracts.

15 MR. BROWN: All right.

16 I think, Mr. Inselbuch, that
17 may be all I have. I'll pass
18 to the next questioner.

19 MR. J. COHN: I'll
20 follow up. I think it makes
21 sense.

22 **EXAMINATION BY**
23 **MR. J. COHN:**

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1 **Q. In your experience with**
2 **other asbestos trusts, does the trust**
3 **agreements provide that the trustees**
4 **will be required to consult with the**
5 **TAC members on various issues?**

6 A. The documents say what
7 they say. They often call for
8 consultation on specific issues.

9 **Q. And do they often also**
10 **call for the trustees to obtain the**
11 **consent of the TAC and the future**
12 **claimants' representative before**
13 **certain actions can be taken?**

14 A. Yes. And failing that
15 consent, there are provisions for
16 overriding the refusal of consent.

17 **Q. What is the necessity of**
18 **having these consent provisions in**
19 **the trust agreement?**

20 MR. FINCH: Object to
21 form.

22 A. So that as -- as the
23 trust is administered, it will be
24 administered in a way that is

1 **Q. Mr. Inselbuch, Jacob**
2 **Cohn for Federal Insurance Company.**

3 **If we could go to the TDPs for**
4 **a moment, Exhibit --**

5 A. I'd ask you to speak a
6 little louder --

7 **Q. Sure. You know what?**
8 **Why don't I come down there?**

9 A. -- because you're
10 talking in my bad ear.

11 **Q. All right. You have**
12 **the --**

13 A. I have the TDP.

14 **Q. -- TDPs. If you take a**
15 **look at page 31, the end of**
16 **5.3(b)(1)(B) --**

17 A. Yeah.

18 **Q. -- it's the paragraph**
19 **above the scheduled value**
20 **paragraph --**

21 A. Yes.

22 **Q. -- beginning provision.**

23 A. Yes.

24 **Q. It has a reference to**

PP's
Obj:
R,
BE,
F

<p>C1</p> <p>1 choice of law.</p> <p>2 A. Yes.</p> <p>3 Q. And it says -- there's a</p> <p>4 reference to the Alabama wrongful</p> <p>5 death statute and there's a reference</p> <p>6 to "shall only govern the rights</p> <p>7 between the PI trust and the</p> <p>8 claimant, and, to the extent the PI</p> <p>9 trust seeks recovery from any entity</p> <p>10 that provided insurance coverage to</p> <p>11 Grace, the Alabama wrongful death</p> <p>12 statute shall govern."</p> <p>13 A. Uh-huh.</p> <p>14 Q. Are you familiar with</p> <p>15 that provision?</p> <p>16 A. I see it.</p> <p>17 Q. What is the purpose of</p> <p>18 that provision?</p> <p>19 A. Which part of it?</p> <p>20 Q. The part that applies --</p> <p>21 at least purports to apply a rule to</p> <p>22 insurer disputes.</p> <p>23 MR. FINCH: Object to</p> <p>24 form.</p>	<p>C1</p> <p>1 Whether or not this provision,</p> <p>2 as it states, also will govern the</p> <p>3 relationship with insurers is</p> <p>4 something that I guess the insurers</p> <p>5 can debate at some point in court.</p> <p>6 Q. Is this, therefore,</p> <p>7 intended to be a carve-out from the</p> <p>8 insurer neutrality provision of the</p> <p>9 plan?</p> <p>10 MR. FINCH: Object to</p> <p>11 C1 form, lack of foundation.</p> <p>12 (The witness reviews the</p> <p>13 document.)</p> <p>14 A. I don't know the answer</p> <p>15 to that.</p> <p>16 Q. You are familiar with</p> <p>17 the insurance neutrality provision of</p> <p>18 the plan?</p> <p>19 A. Only very generally.</p> <p>20 Q. Would reviewing that</p> <p>21 give you any help in answering this</p> <p>22 question?</p> <p>23 A. No. That's something</p> <p>24 you ought to ask Mr. Lockwood.</p> <p>PP's Obj: R, BE, F</p>
<p>C1</p> <p>1 (The witness reviews the</p> <p>2 document.)</p> <p>3 A. The point of this whole</p> <p>4 provision was to ameliorate a problem</p> <p>5 that existed under the law of</p> <p>6 Alabama. As you know, under the</p> <p>7 terms of the TDP, no punitive damages</p> <p>8 are included in the recovery. As</p> <p>9 this was all explained to me at the</p> <p>10 time, in Alabama the recovery for</p> <p>11 wrongful death is couched in terms of</p> <p>12 punitive damages. So that, read</p> <p>13 literally, there could be no recovery</p> <p>14 under this document for a wrongful</p> <p>15 death that would have as its</p> <p>16 operative jurisdiction the State of</p> <p>17 Alabama.</p> <p>18 This provision was inserted to</p> <p>19 cure that problem, to make it</p> <p>20 possible for what we would all --</p> <p>21 what we all regarded as</p> <p>22 run-of-the-mill ordinary death claims</p> <p>23 that happened to occur in Alabama to</p> <p>24 recover under the terms of the trust.</p> <p>PP's Obj: R, BE, F</p>	<p>C1</p> <p>1 Q. You've represented</p> <p>2 numerous what have come to be known</p> <p>3 as asbestos creditors committees, or</p> <p>4 ACCs, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And as counsel you are</p> <p>7 representing the members of that</p> <p>8 committee, correct?</p> <p>9 MR. FINCH: Object to</p> <p>10 C1 form.</p> <p>11 A. Yes.</p> <p>12 Q. And those members have</p> <p>13 fiduciary duties; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. To whom do those</p> <p>16 fiduciary duties run?</p> <p>17 A. The entire</p> <p>18 constituency.</p> <p>19 Q. Who is the</p> <p>20 constituency?</p> <p>21 A. All asbestos claimants</p> <p>22 against the particular debtor.</p> <p>23 Q. Irrespective of the</p> <p>24 validity of their claims; is that</p> <p>PP's Obj: R, BE, F</p>

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<p>1 correct?</p> <p>2 MR. FINCH: Object to</p> <p>3 form.</p> <p>4 A. Well, when I say "a</p> <p>5 claimant", I presuppose that they</p> <p>6 have a claim.</p> <p>7 Q. So you operate on the</p> <p>8 assumption, is it correct, that</p> <p>9 somebody that is represented by a</p> <p>10 lawyer that is asserting a claim has</p> <p>11 a valid claim against that particular</p> <p>12 debtor?</p> <p>13 A. No. You asked me to</p> <p>14 whom did the fiduciary duty extend.</p> <p>15 It extends to those folks who have</p> <p>16 claims.</p> <p>17 Q. Is there a fiduciary</p> <p>18 duty of the committee to attempt to</p> <p>19 ferret out those people who have come</p> <p>20 before the Bankruptcy Court but do</p> <p>21 not have meritorious claims?</p> <p>22 A. No. The committee's</p> <p>23 duty is to participate in the</p> <p>24 preparation of a TDP and a plan that</p>	<p>1 A. Yet-to-come claimants.</p> <p>2 Q. -- yet-to-come</p> <p>3 claimants?</p> <p>4 A. But he also is</p> <p>5 interested in seeing to it that as</p> <p>6 much money as possible goes in the</p> <p>7 pot.</p> <p>8 Q. They have a common</p> <p>9 interest in maximizing the size of</p> <p>10 the pot, correct?</p> <p>11 A. I believe so.</p> <p>12 Q. And it is therefore in</p> <p>13 the interest of the asbestos</p> <p>14 creditors committee and the FCR to</p> <p>15 see as much insurance money paid into</p> <p>16 that pot as quickly as possible,</p> <p>17 correct?</p> <p>18 A. Sure.</p> <p>19 Q. And when the trust is</p> <p>20 established, the trust owes a</p> <p>21 fiduciary duty to its beneficiaries,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And --</p>
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<p>1 will, as best possible, pay claims</p> <p>2 that are valid and in as an efficient</p> <p>3 manner as possible.</p> <p>4 Q. And as representatives</p> <p>5 of existing claimants, the ACC wants</p> <p>6 to get as much money as possible for</p> <p>7 the existing claimants, correct?</p> <p>8 A. First of all, the ACC</p> <p>9 are the victims who are appointed to</p> <p>10 the committee. You seem to be</p> <p>11 fudging over talking about their</p> <p>12 lawyers.</p> <p>13 Q. I don't think that I am,</p> <p>14 but please --</p> <p>15 A. Okay. I'm talking about</p> <p>16 the claimants. Surely, their job is</p> <p>17 to see in the debates among the</p> <p>18 various creditor constituencies how</p> <p>19 much of the pie that's available to</p> <p>20 all creditors can be allocated to</p> <p>21 asbestos claimants.</p> <p>22 Q. Okay. And the FCR has a</p> <p>23 different constituency. Those</p> <p>24 are --</p>	<p>1 A. The trustees do.</p> <p>2 Q. The trustees.</p> <p>3 And the beneficiaries of the</p> <p>4 trust --</p> <p>5 A. Yes.</p> <p>6 Q. -- are existing and</p> <p>7 future claimants against that debtor</p> <p>8 who's established a trust, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And the trust has a</p> <p>11 fiduciary duty to maximize the</p> <p>12 compensation to its beneficiaries,</p> <p>13 correct?</p> <p>14 MR. FINCH: Object to</p> <p>15 form. Mischaracterizes the</p> <p>16 document.</p> <p>17 A. Sure.</p> <p>18 Q. And the main issue</p> <p>19 between the current claimants and the</p> <p>20 future claimants is ensuring that</p> <p>21 enough money is available going out</p> <p>22 in time to assure as much as possible</p> <p>23 the non-preferential treatment of</p> <p>24 each claim. Is that correct?</p>

C1 Page 234	C1 Page 236
<p>1 A. You could -- that's 2 fair. That's a fair way to put it. 3 Q. And the trust, 4 similarly, shares an interest in 5 getting as much money into the trust 6 from whatever source as quickly as 7 possible. Is that correct?</p>	<p>1 There's no reference in these 2 TDPs to the doctors who the Manville 3 trust will no longer consider paying 4 claims based upon their diagnosis, is 5 there?</p>
<p>8 MR. FINCH: Object to 9 form.</p>	<p>8 A. That's correct. 9 Q. Do you know why those 10 doctors are not identified here?</p>
<p>10 A. Yes. The trustees also 11 have a fiduciary responsibility in 12 addition to the futures rep to see to 13 it that all claimants that come 14 before the trust are treated more or 15 less equitably.</p>	<p>10 A. Because it's for the 11 trustees to decide whether or not 12 they will list one or another 13 facility as being a facility whose 14 evidence they will not credit.</p>
<p>16 Q. Do the trustees have any 17 duty at all to the insurers?</p>	<p>15 Q. And the trustees are 16 supposed to consult with TAC members 17 about that; is that correct?</p>
<p>18 A. As insurers?</p>	<p>18 MR. FINCH: Object to 19 form.</p>
<p>19 Q. Yes.</p>	<p>19 A. Not necessarily.</p>
<p>20 A. Not that I can think 21 of.</p>	<p>20 Q. In Manville, is there a 21 cap on the contingent fee that 22 plaintiffs' attorneys can recover?</p>
<p>22 Q. In fact, with respect to 23 the insurance relationship, typically 24 insurers are in an adversarial</p>	<p>22 A. There is. 23 Q. And that is how much?</p>
C1 Page 235	Page 237
<p>1 position with the trust, correct?</p>	<p>1 A. 25 percent.</p>
<p>2 A. Yes.</p>	<p>2 Q. Is the rationale for 3 that because it's a lot easier to 4 recover from a trust than it is to 5 recover from a defendant in the tort 6 system?</p>
<p>3 Q. You've been involved, as 4 you said, as counsel for what we 5 could colloquially call the Manville 6 TAC, correct?</p>	<p>7 A. No. 8 MR. FINCH: Objection.</p>
<p>7 A. Correct, yes. Still 8 am.</p>	<p>9 Q. Is there a rationale for 10 that?</p>
<p>9 Q. Are you familiar with 10 the Manville trust's having issued 11 pronouncements that it will no longer 12 honor claims that are submitted based 13 upon the diagnosis of certain doctors 14 whose reliability has been called 15 into question?</p>	<p>11 A. Jack Weinstein insisted 12 on it. 13 Q. To your knowledge, has 14 any trust, other than the one that 15 the judge insisted upon imposing a 16 fee cap, ever imposed a contingent 17 fee cap on the recovery of 18 plaintiffs' attorneys?</p>
<p>16 A. I am.</p>	<p>19 A. No. And remember that 20 Weinstein was sitting over the 21 question of the fairness of a class 22 action settlement. He was not 23 sitting as a bankruptcy judge.</p>
<p>17 Q. Would you take a look at 18 page 40 of the TDPs, please, 19 5.7(a)(2), regarding the credibility 20 of medical evidence?</p>	<p>24 Q. Is that fair to say that</p>
<p>21 A. Yes.</p>	
<p>22 Q. There's no reference to 23 the doctors who have been 24 discredited -- strike that.</p>	

C1	Page 238	Page 240
	<p>1 you were the most responsible --</p> <p>2 sorry -- the ACC is the most</p> <p>3 responsible for preparing the TDPs;</p> <p>4 is that right?</p>	<p>1 Q. Is that your experience,</p> <p>2 however?</p> <p>3 MS. BAER: Objection.</p> <p>4 MR. FINCH: Object to</p>
	<p>5 MR. FINCH: Object to</p> <p>6 form.</p>	<p>5 form, foundation.</p> <p>6 A. I don't read their</p>
C1	<p>7 A. As among what group?</p>	<p>6 minds.</p>
	<p>8 Q. Well --</p>	<p>7 Q. Typically, is the</p>
	<p>9 A. We were more responsible</p> <p>10 than the New York City Police</p> <p>11 Department.</p>	<p>8 involvement of debtors in such</p> <p>9 situations in the negotiation of TDPs</p> <p>10 limited to the issues that I've just</p> <p>11 mentioned?</p>
	<p>12 Q. Well, in the course of</p>	<p>12 MS. BAER: Objection.</p>
	<p>13 negotiating TDPs and plans generally</p>	<p>13 MR. FINCH: Object to</p>
	<p>14 when you are representing --</p>	<p>14 form.</p>
	<p>15 A. Yes.</p>	<p>15 MS. BAER: Form,</p>
	<p>16 Q. -- ACCs, is it typical</p>	<p>16 foundation.</p>
	<p>17 for the ACC's counsel to draft the</p>	<p>17 A. No, no. The debtors</p>
	<p>18 first draft?</p>	<p>18 have an interest in dealing with</p>
	<p>19 A. Of the TDP?</p>	<p>19 objectors that might have objections</p>
	<p>20 Q. Yes.</p>	<p>20 to the TDP and they'll address those</p>
	<p>21 A. Yes.</p>	<p>21 issues with us and with the futures</p>
	<p>22 Q. And then it's typical</p>	<p>22 rep, and it would depend on the</p>
	<p>23 that the FCR would do further comment</p>	<p>23 particular case.</p>
	<p>24 on it?</p>	
C1	Page 239	Page 241
	<p>1 A. Have to, yes.</p>	<p>1 MR. J. COHN: I pass the</p>
	<p>2 Q. Is it fair to say that</p>	<p>2 witness. Thank you.</p>
	<p>3 the FCR and the ACC are the</p>	<p>3 THE WITNESS: Anybody</p>
	<p>4 constituencies that are most</p>	<p>4 else?</p>
	<p>5 concerned with the contents of a</p>	<p>5 MR. FINCH: Anybody</p>
	<p>6 TDP?</p>	<p>6 else?</p>
	<p>7 MR. FINCH: Object to</p>	<p>7 EXAMINATION BY</p>
C1	<p>8 form.</p>	<p>8 MS. ABRAVANEL:</p>
	<p>9 A. Yes.</p>	<p>9 Q. Mr. Inselbuch, my name</p>
	<p>10 Q. Is it fair to say that</p>	<p>10 is Karen Abravanel. I'm from Simpson</p>
	<p>11 once a debtor has cut an economic</p>	<p>11 Thacher and I represent Travelers</p>
	<p>12 deal with the asbestos constituencies</p>	<p>12 Casualty & Surety.</p>
	<p>13 that its interest in the TDPs are</p>	<p>13 You said that you haven't</p>
	<p>14 primarily to ensure that they will</p>	<p>14 reviewed any of the insurance</p>
	<p>15 garner the necessary supermajority</p>	<p>15 policies at issue in these</p>
	<p>16 vote and comply with 524g so that a</p>	<p>16 procedures. Is that right?</p>
	<p>17 plan could be confirmed?</p>	<p>17 A. That's my best</p>
	<p>18 MR. FINCH: Objection to</p>	<p>18 recollection.</p>
	<p>19 form.</p>	<p>19 Q. Have you reviewed any of</p>
	<p>20 MS. BAER: Objection.</p>	<p>20 the settlement agreements entered</p>
	<p>21 Objection to form, lack of</p>	<p>21 into between Grace and its insurers</p>
	<p>22 foundation.</p>	<p>22 pre-petition?</p>
	<p>23 A. You'd have to ask</p>	<p>23 A. I do not believe so.</p>
	<p>24 them.</p>	

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1 **claim?**

2 MR. FINCH: Objection.
3 Form, foundation, calls for
4 speculation, hypothetical.
5 A. As a general
6 proposition, an indirect claimant
7 steps into the shoes of the claimant
8 because the basis for the indirect
9 claim is that he have absolved the
10 trust from the direct claimant's
11 claim. So they could step into the
12 shoes of the claimant, they could
13 proceed as an expedited claim, they
14 could proceed as an individual review
15 claim. If there were an entitlement
16 to extraordinary treatment, that
17 would apply.

18 **Q. Okay.**

19 A. Whatever -- whatever the
20 rules that would apply to the direct
21 claimant would apply to the indirect
22 claimant.

23 **Q. Okay. And let me just**
24 **be a little bit more specific. Would**

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1 **the PI -- will the PI trust apply the**
2 **payment percentage of a payment --**

3 A. Yes.

4 **Q. -- on an indirect PI**
5 **trust claim?**

6 A. Yes.

7 **Q. Okay. Can you tell me,**
8 **on the flip side, if the plan is**
9 **confirmed how will the asbestos PI**
10 **trust calculate an insurer's payment**
11 **obligation under an asbestos**
12 **reinsurance agreement?**

13 A. I have no idea.

14 MR. FINCH: Objection.

15 **Q. Sorry, sorry. Asbestos**
16 **reimbursement agreement.**

17 MR. FINCH: Objection to
18 form and foundation.

19 A. I have no idea.

20 MS. ABRAVANEL: Okay, I
21 have no further questions.

22 Thank you.

23 THE WITNESS: Anybody
24 else?

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1 MR. DEMMY: I'll do them
2 from down here. If you can't
3 hear me, just let me know.

4 THE WITNESS: I can hear
5 you.

6 MR. FINCH: Who are you
7 and who do you represent? I
8 know who you are. Who do you
9 represent?

10 MR. DEMMY: I will do
11 that.

12 **EXAMINATION BY**

13 **MR. DEMMY:**

14 **Q. My name is John Demmy**
15 **and I represent Firemen's Fund**
16 **Insurance Company and some other**
17 **related insurers.**

18 **In the Grace case, does the**
19 **committee conduct its business**
20 **through periodic meetings?**

21 A. Yes.

22 **Q. Do you participate in**
23 **those meetings?**

1 A. I do.

2 **Q. Who typically**
3 **participates in those meetings?**

4 A. Counsel for each of the
5 individual committee members, counsel
6 for the committee, and whoever else
7 in a particular situation might be
8 asked to participate.

9 **Q. Do the appointed**
10 **committee members, the holders of**
11 **claims, ever participate in the**
12 **committee meetings?**

13 A. Not usually.

14 **Q. Do they ever?**

15 A. There have been an
16 occasion where they did but it's --
17 it would be most unusual.

18 MR. DEMMY: Okay, that's
19 all the questions I have.
20 Thank you.

21 THE WITNESS: Anybody
22 else?

23 MR. FINCH: Next?

24 MR. DOWNEY: Phil

PP's
Obj:
R